

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

	-----X	
	:	
In re	:	Chapter 9
	:	
CITY OF DETROIT, MICHIGAN,	:	Case No. 13-53846
	:	
Debtor.	:	Hon. Steven W. Rhodes
	:	
	:	
	-----X	

**CITY OF DETROIT’S CONSOLIDATED
COUNTER-DESIGNATION OF THE CONTENTS OF THE
RECORD AND COUNTER-STATEMENT OF ISSUES ON APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, appellee the City of Detroit (the “City”) hereby submits this counter-designation of the contents of the record and counter-statement of the issues on appeal in response to the following:¹

- i. *Appellant’s Designation of the Items to be Included in the Record on Appeal*
[Docket No. 2243] filed by appellants Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-

¹ Pursuant to instructions from the Bankruptcy Court Clerk’s Office, the City is filing its counter-designation of the record and counter-statement of the issues on appeal in a consolidated manner for each of the listed appeals.

Chapter 98, City of Detroit Retirees (collectively, “AFSCME”) on December 19, 2013.

- ii. *Statement of Issues to be Presented on Appeal* [Docket No. 2257] and *Appellants’ Designation of Items to be Included in the Record on Appeal* [Docket No. 2276] filed by appellants International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”) and Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington and Bruce Goldman, as plaintiffs in the suit *Flowers v. Snyder*, No. 13-729 CZ (Ingham County Circuit Court), on December 20, 2013.
- iii. *Detroit Retirement Systems’ Statement of Issues to be Presented on Appeal* [Docket No. 2275] and *Detroit Retirement Systems’ Designation of Record on Appeal* [Docket No. 2279] filed by appellants the Police and Fire Retirement System of the City of Detroit and the General Retirement System of the City of Detroit on December 20, 2013.
- iv. *Official Committee of Retirees’ Designation of Contents of the Record on Appeal* [Docket No. 2286] and *Official Committee of Retirees’ Statement of Issues to be Presented on Appeal* [Docket No. 2287] filed by appellants the Official Committee of Retirees on December 21, 2013.
- v. *Designation by Retiree Association Parties of Record on Appeal* [Docket No. 2300] and *Statement by Retiree Association Parties of Issues on Appeal*

[Docket No. 2301] filed by appellants the Retired Detroit Police & Fire Fighters Association (“RDPFFA”), Donald Taylor, individually and as President of the RDPFFA, the Detroit Retired City Employees Association (“DRCEA”), and Shirley V. Lightsey, individually and as President of the DRCEA on December 23, 2013, and December 24, 2013, respectively.

- vi. *Appellant’s Designation of the Contents of the Record on Appeal* [Docket No. 2334] and *The Retired Detroit Police Members Association’s Statement of Issues on Appeal* [Docket No. 2338] filed by the Retired Detroit Police Members Association on December 27, 2013.
- vii. *Appellants’ Designation of Items to be Included In the Record on Appeal* [Docket No. 2335] and *Appellants’ Statement of Issues to be Presented on Appeal* [Docket No. 2336] filed by the Detroit Fire Fighters Association, the Detroit Police Officers Association, and the Detroit Police Command Officers Association on December 27, 2013.

Counter-Statement of Issues on Appeal

1. Whether the Bankruptcy Court correctly concluded that the City of Detroit is eligible to be a debtor under chapter 9 of the United States Bankruptcy Code, 11 U.S.C. 901, et seq.

- a. Whether the Bankruptcy Court correctly concluded that chapter 9 is constitutional, as the Supreme Court held in United States v. Bekins, 304 U.S. 27 (1938).
- b. Whether the Bankruptcy Court correctly concluded that the City was specifically authorized by State law and the Governor of Michigan to file a petition for bankruptcy under chapter 9, as required by 11 U.S.C. § 109(c)(2).
- c. Whether the Bankruptcy Court correctly concluded that the City was insolvent at the time it filed for bankruptcy under chapter 9, as required by 11 U.S.C. § 109(c)(3).
- d. Whether the Bankruptcy Court correctly concluded that the City desired to effect a plan to adjust its debts at the time it filed for bankruptcy under chapter 9, as required by 11 U.S.C. § 109(c)(4).
- e. Whether the Bankruptcy Court correctly concluded that negotiations between the City and its thousands of creditors was impracticable under 11 U.S.C. § 109(c)(5)(C).
- f. Whether the Bankruptcy Court correctly concluded that the City filed its bankruptcy petition in good faith, as required by 11 U.S.C. § 921(c).

Designation of Additional Items to Be Included in the Record On Appeal

A. Case No. 13-53846

Item No. (Attached)	Docket Number	Description
1	0001	Voluntary Petition for City of Detroit, Michigan
2	0010	Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code
3	0011	Declaration of Kevyn D. Orr in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code
4	0012	Declaration of Gaurav Malhotra in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code
5	0013	Declaration of Charles M. Moore in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code
6	0014	Memorandum in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code
7	0190	Notice of Proposed Dates and Deadlines
8	0191	Notice of Proposed Dates and Deadlines
9	0280	First Order Establishing Dates and Deadlines
10	0298	Notice of Commencement of Case Under Chapter 9, Notice of Automatic Stay and Purposes of Chapter 9, Notice of Deadline and Procedures for Filing Objections to the Chapter 9 Petition and Notice of City's Motion to Limit Notice
11	0642	Order Regarding Eligibility Objections Notices of Hearings and Certifications Pursuant to 28 U.S.C. § 2403(a) & (b)
12	0756	The State of Michigan's Response to Eligibility Objections Raising Only Legal Issues
13	0765	City of Detroit's Consolidated Reply to Objections to the Entry of an Order for Relief

14	0821	First Amended Order Regarding Eligibility Objections Notices of Hearings and Certifications Pursuant to 28 U.S.C. § 2403(a) & (b)
15	0918	City of Detroit's Reply to the Objection of the Official Committee of Retirees to the Entry of an Order for Relief
16	0925	City of Detroit's Objection to Motion of Official Retiree Committee to Stay Deadlines and Hearings Related to Eligibility Proceedings
17	1039	Opinion and Order Denying Motion to Stay Proceedings Pending Determination of Motion to Withdraw the Reference
18	1085	The State of Michigan's Supplemental Response to Eligibility Objections Raising Only Legal Issues
19	1217	Order Regarding Further Briefing on Eligibility
20	1219	State of Michigan's Supplement to the Record Regarding Eligibility
21	1220	Exhibit Filed by Interested Party State of Michigan
22	1221	Exhibit Filed by Interested Party State of Michigan
23	1232	Stipulation for Entry of Joint Final Pre-Trial Order
24	1309	Debtor's Response to Motion in Limine to Exclude Opinions or Conclusions as to the City of Detroit, Michigan's Underfunding of Pension Liability
25	1319	State of Michigan's Response to Motion of International Union, UAW and Flowers Plaintiffs to Compel Production of Documents Withheld on Grounds of Privilege by the State of Michigan

26	1320	Debtor's Omnibus Opposition to the International Union, UAW's Motion (A) to Compel Production of Documents Withheld on Grounds of Privilege and (B) for Reconsideration of This Court's September 19 Order on Privilege Issues and the Detroit Retirement Systems' Motion to Compel Production of Documents Withheld on the Grounds of Privilege
27	1322	The City's Motion for Entry of an Amended Final Pre-Trial Order
28	1350	The City's Motion for Entry of Amended Final Pre-Trial Order
29	1353	Notice Regarding Briefing on "Good Faith Negotiations"
30	1354	Amended Final Pre-Trial Order
31	1356	Pre-Trial Order
32	1386	Debtor's Amended Memorandum Regarding Admissibility of Testimony Regarding the City's Financial Projections
33	1387	Order Denying Motion in Limine
34	1453	Notice Regarding Trial Schedule
35	1547	The State's Response to Supplemental Briefing on Eligibility
36	1556	City of Detroit's Supplemental Brief in Support of Entry of an Order for Relief
37	1560	United States of America's Supplemental Brief in Support of the Constitutionality of Chapter 9
38	1606	Stipulation for Entry of Second Amended Final Pre-Trial Order
39	1707	Debtor's Memorandum Regarding Good Faith Under 11 U.S.C. § 109(c)(5)(B), Labor Law, and 11 U.S.C. §§ 1113, 1114
40	1717	Memorandum Regarding Supplemental Authority
41	1747	Supplemental Order Regarding Second Amended Final Pre-Trial Order
42	1805	Notice of Bench Decision
43	1945	Opinion Regarding Eligibility
44	1946	Order for Relief Under Chapter 9 of the Bankruptcy Code

45	2083	The City of Detroit's Opposition to Immediate Appeal and Statement Regarding Certification to the Sixth Circuit
46	2190	The City of Detroit's Post-Hearing Submission Regarding Expedition of Appeal to the Sixth Circuit
47	2268	Certification Regarding Direct Appeal to the Court of Appeals
48	2269	Memorandum Regarding: I. Certification Under 28 U.S.C. § 158(d)(2)(A)(i) II. Recommendation on Whether Direct Appeals Should Be Authorized and III. Parties' Request to Recommend Expedited Consideration of Appeals
49	2274	Amended Certification Regarding Direct Appeal to the Court of Appeals

B. City's Exhibits Admitted at Eligibility Hearing²

Trial Exhibit No.	Date	Description
1	November 8, 2011	Charter – City of Detroit [DTMI00230808-0933]
2	June 30, 2008	Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2008 [DTMI00230934-1157]
3	June 30, 2009	Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2009 [DTMI00231158-1378]
4	June 30, 2010	Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2010 [DTMI00230335-0571]
5	June 30, 2011	Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2011 [DTMI00230572-0807]

² Pursuant to instructions from the Bankruptcy Court Clerk's Office, the City has not attached its admitted Trial Exhibits. Copies of the Trial Exhibits will be provided by the Bankruptcy Court at the request of the appellate court.

6	June 30, 2012	Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2012 [DTMI00231379-1623]
7	November 13, 2012	November 13, 2012, Memorandum of Understanding City of Detroit Reform Program [DTMI00222996-3010]
9		Cash Flow Forecasts [Malhotra Declaration Ex. A]
10		Ten-Year Projections [Malhotra Declaration Ex. B]
11		Legacy Expenditures (Assuming No Restructuring) [Malhotra Declaration Ex. C]
12	June 30, 2012	Schedule of the sewage disposal system bonds and related state revolving loans as of June 30, 2012 [Malhotra Declaration Ex. D]
13	June 30, 2012	Schedule of water system bonds and related state revolving loans as of June 30, 2012 [Malhotra Declaration Ex. E]
14		Annual Debt Service on Revenue Bonds [Malhotra Declaration Ex. F]
15	June 30, 2012	Schedule of COPs and Swap Contracts as of June 30, 2012 [Malhotra Declaration Ex. G]
16		Annual Debt Service on COPs and Swap Contracts [Malhotra Declaration Ex. H]
17	June 30, 2012	Schedule of UTGO Bonds as of June 30, 2012 [Malhotra Declaration Ex. I]
18	June 30, 2012	Schedule of LTGO Bonds as of June 30, 2012 [Malhotra Declaration Ex. J]
19		Annual Debt Service on General Obligation Debt & Other Liabilities [Malhotra Declaration Ex. K]
21	January 13, 2012	January 13, 2012, City of Detroit, Michigan Notice of Preliminary Financial Review Findings and Appointment of a Financial Review Team [Orr Declaration Ex. C]
22	March 26, 2012	March 26, 2012, Report of the Detroit Financial Review Team [Orr Declaration Ex. D]
23	April 9, 2012	April 9, 2012, Financial Stability Agreement [Orr Declaration Ex. E]
24	December 14, 2012	December 14, 2012, Preliminary Review of the City of Detroit [Orr Declaration Ex. F]
25	February 19, 2013	February 19, 2013, Report of the Detroit Financial Review Team [Orr Declaration Ex. G]
26	March 1, 2013	March 1, 2013, letter from Governor Richard Snyder to the City [Orr Declaration Ex. H]
28	July 16, 2013	July 16, 2013, Recommendation Pursuant to Section 18(1) of PA 436 [Orr Declaration Ex. J]
29	July 18, 2013	July 18, 2013, Authorization to Commence Chapter 9 Bankruptcy Proceeding [Orr Declaration Ex. K]
30	July 18, 2013	July 18, 2013, Emergency Manager Order No. 13 Filing of a Petition Under Chapter 9 of Title 11 of the United States Code [Orr Declaration Ex. L]

32		Collection of correspondence between Jones Day and representatives of Unions regarding the representation of current retirees [DTMI00084776-4924]
35		Redacted log of meetings and correspondence between the City and its advisors and various creditors prior to July 18, 2013. [DTMI00231921-1926]
36		FRE 1006 chart summarizing efforts to negotiate with union creditors. [DTMI-00235448]
37		FRE 1006 chart summarizing efforts to negotiate with other creditors. [DTMI-00235447]
38		FRE 1006 chart summarizing the City's projected cash flows. [DTMI00235438]
41	June 10, 2013	June 10, 2013, City of Detroit Financial and Operating Plan Slides [DTMI00224211-4231]
42	June 14, 2013	RSVP List for June 14, 2013 Proposal for Creditors Meeting [DTMI00125427]
43	June 14, 2013	June 14, 2013, City of Detroit Proposal for Creditors [DTMI00227144-7277]
44	June 14, 2013	June 14, 2013 Proposal for Creditors – Executive Summary [DTMI00227278-7342]
45	June 20, 2013	List of Invitees to the June 20, 2013 Meetings [DTMI00128659-8661]
46	June 20, 2013	Sign-in sheets from June 20, 2013, 10:00 AM-12:00 PM (Non-Uniform Retiree Benefits Restructuring) [DTMI00235427-5434]
47	June 20, 2013	Sign-in sheets from June 20, 2013 2:00-4:00 PM (Uniform Retiree Benefits Restructuring) [DTMI00235435-5437]
48	June 20, 2013	June 20, 2013 City of Detroit Retiree Legacy Cost Restructuring – Non-Uniform Retirees [DTMI00067906-7928]
49	June 20, 2013	June 20, 2013 City of Detroit Retiree Legacy Cost Restructuring – Uniform Retirees [DTMI00067930-7953]
50	June 25, 2013	Invitee List and Sign-in Sheet for the June 25, 2013 Meeting [DTMI00125428-5431]
51	June 25, 2013	Cash Flow Forecasts provided at June 25, 2013 Meeting [DTMI00231905-1919]
52	June 27, 2013	Composite of emails attaching 63 letters dated June 27, 2013 to participants of the June 20, 2013 meetings [DTMI00128274-DTMI0012835; DTMI00239435-DTMI0023446]
53		List of Attendees at July 9 and 10, 2013 Creditor Meetings [DTMI00231791]
54	December 1, 2012	Detroit Future City Plan 2012 [DTMI00070031-0213]
55		Collection of correspondence regarding invitations to the July 10 Pension Meetings and July 11 Retiree Health Meetings [DTMI00235408-5426]
56	July 10, 2013	July 10, 2013 City of Detroit Sign In Sheet for 1:00 PM Pension and Retiree Meeting [DTMI00229088-9090]

57	July 10, 2012	July 10, 2012 City of Detroit Sign In Sheet for 3:30 PM Police and Fire Meeting [DTMI00229091-9094]
58	July 11, 2013	July 11, 2013 City of Detroit Sign-in Sheet for 10:00 AM Non-Uniformed Meeting. [DTMI00229095-9096]
59	July 11, 2013	July 11, 2013 City of Detroit Sign-in Sheet for the 1:30 PM Uniformed Meeting. [DTMI229102-9103]
60	July 11, 2013	July 11, 2013 City of Detroit Union- Retiree Meeting Draft Medicare Advantage Plan Design Options [DTMI00135663]
61	July 2, 2013	Correspondence between representatives of AFSCME and representatives of the City [Ex. F to the City of Detroit's Consolidated Reply to Objections to the Entry of an Order for Relief, Docket No. 765]
63	July 31, 2013	July 31, 2013 Notice of Filing Amended List of Creditors Holding 20 Largest Unsecured Claims
64	September 30, 2013	September 30, 2013 Notice of Filing of Second Amended List of Creditors and Claims, Pursuant to Sections 924 and 925 of The Bankruptcy Code
68	June 30, 2011	June 30, 2011, Gabriel Roeder Smith & Company, 73rd Annual Actuarial Valuation of the General Retirement System of the City of Detroit [DTMI00225546-5596]
69	April 1, 2013	April 2013, Gabriel Roeder Smith & Company, Draft 74th Annual Actuarial Valuation of the General Retirement System of the City of Detroit as of June 30, 2012 [DTMI00225597-5645]
70	May 22, 2013	June 30, 2012, Gabriel Roeder Smith & Co., 71st Annual Actuarial Valuation of the Police and Fire Retirement System of the City of Detroit [DTMI 00202414-2461]
73	July 17, 2013	July 17, 2013 Letter from Evan Miller to representatives of the City of Detroit Police and Firefighters Unions
74	July 15, 2013	July 15, 2013 Quarterly Report with Respect to the Financial Condition of the City of Detroit (period April 1st - June 30th)
75	May 12, 2013	May 12, 2013 City of Detroit, Office of the Emergency Manager, Financial and Operating Plan
76	September 13, 2013	Responses of International Union, UAW to Debtor's First Set of Interrogatories
78	September 18, 2013	Michigan Council 25 of the American Federation of State, County and Municipal Employees, AFL-CIO, and Sub-Chapter 98, City of Detroit Retirees Responses and Objections to Debtor's First Set of Interrogatories
79	September 13, 2013	The Detroit Retirement Systems' Responses and Objections to the Debtor's First Interrogatories
80	September 16, 2013	Amended (Signed) Response of Detroit Police Command Officers Association to Debtor's First Set of Interrogatories to the Detroit Public Safety Unions
81	September 13, 2013	Response of Detroit Police Lieutenants & Sergeants Association to Debtor's First Set of Interrogatories to the Detroit Public Safety Unions

82	September 13, 2013	Response of Detroit Police Officers Association to Debtor's First Set of Interrogatories to the Detroit Public Safety Unions
83	September 13, 2013	Answers to Debtor's First Interrogatories to Retiree Association Parties
84	September 13, 2013	Retired Detroit Police Members Association's Answers to Debtor's First Set of Interrogatories
85	October 11, 2013	Responses of the Official Committee of Retirees to Debtor's First Set of Interrogatories
86	September 13, 2013	Objection and Responses of International Union, UAW to Debtor's First Request for Production of Documents
87	September 13, 2013	Michigan Council 25 of the American Federation of State, County and Municipal Employees, AFL-CIO, and Sub-Chapter 98, City of Detroit Retirees Responses and Objections to Debtor's First Set of Requests for Production of Documents
88	September 13, 2013	The Detroit Retirement Systems' Responses and Objections to the Debtor's First Set of Request for Production of Documents
89	September 16, 2013	Amended (Signed) Response of Detroit Police Command Officers Association to Debtor's First Requests for Production of Documents to the Detroit Public Safety Unions
90	September 13, 2013	The Detroit Fire Fighters Associations' (DFFA) Response to Debtor's First Request for Production of Documents
91	September 13, 2013	Response of Retiree Association Parties to Debtor's First Requests for Production of Documents
92	July 29, 2013	Retired Detroit Police Members Association Response to Debtor's First Requests for Production
93	June 14, 2013	June 14, 2013 Index Card #1 from Nicholson
94	June 14, 2013	June 14, 2013 Index Card #2 from Nicholson
96	July 16, 2013	July 16, 2013 Nicholson Affidavit in Flowers
97	August 19, 2013	August 19, 2013 UAW Eligibility Objection
98	October 14, 2013	Nicholson Letter To Irwin re UAW Discovery Responses
99		FRE 1006 Chart summarizing the approximate number of documents uploaded to the data room before July 18, 2013
100		FRE 1006 Chart summarizing the approximate number of pages in documents uploaded to the data room before July 18, 2013
101	October 17, 2013	Declaration of Kyle Herman, Director at Miller Buckfire, in support of the FRE 1006 charts summarizing the approximate number of documents and pages uploaded to the data room
102	July 15, 2013	July 15, 2013 Letter from Assured Guaranty Municipal Corp., Ambac Assurance Corporation and National Public Finance Guarantee Corporation to Kevyn D. Orr [redacted]
103		Any exhibit identified by any Objector.

104		Timeline Demonstrative
105	July 11, 2013	Nicholson Notes from OPEB Meeting

Dated: January 2, 2014

Respectfully submitted,

/s/ David G. Heiman

David G. Heiman (OH 0038271)

Heather Lennox (OH 0059649)

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114

Telephone: (216) 586-3939

Facsimile: (216) 579-0212

dgheiman@jonesday.com

hlennox@jonesday.com

Bruce Bennett (CA 105430)

JONES DAY

555 South Flower Street

Fiftieth Floor

Los Angeles, California 90071

Telephone: (213) 243-2382

Facsimile: (213) 243-2539

bbennett@jonesday.com

Robert S. Hertzberg (P30261)

Deborah Kovsky-Apap (P68258)

Pepper Hamilton LLP

4000 Town Center, Suite 1800

Southfield, MI 48075

(248) 359-7300 - Telephone

(248) 359-7700 - Fax

hertzbergr@pepperlaw.com

kovskyd@pepperlaw.com

ATTORNEYS FOR THE CITY